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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,349	01/13/2005	John A. Gelardi	CPG0223KF	1964
66061 7590 04/23/2009 MEADWESTVACO CORPORATION ATTN: IP LEGAL DEPARTMENT 1021 MAIN CAMPUS DRIVE RALEIGH, NC 27606				
EXAMINER				
BUL, LUAN KIM				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
04/23/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

Office Action Summary

Application No.

10/521,349

Applicant(s)

GELARDI ET AL.

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 22-28, 30-36 and 38-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20, 22-28, 30-36 and 38-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Prosecution Application

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/3/2009 has been entered.
2. As a point of clarification, on page 6 of the Final Rejection-Office Action dated 10/2/2008, an unintended error was made by the Examiner that the U.S. Patent No. 7,007,775 should be changed to U.S. Patent No. 7,000,775.

Terminal Disclaimer

3. The patent being disclaimed has been improperly identified since the number used to identify the Patent being disclaimed is incorrect. The correct number is 7,000,775 instead of 7,700,775 as listed by the Applicant. Applicant is required to resubmit the Terminal Disclaimer with the correct patent number.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 20, 22-28, 30-36 and 38-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. In claim 20, the phrases “each said locking tab”, “each said channel” (two places), “at least one said locking tab”, “said locking tab”, “said ledge” and “said channel” lack proper antecedent basis. The phrase “a given” in claims 1 (two places), 22, 39-42, 43 (four places), 44 (three places) and 46 is vague, confusing and indefinite because it has no clear meaning which is “a given”? The phrases “said channel” in claim 22, “each said channel” in claim 33, “said locking tab” in claims 39-42, “each said sleeve panel” in claim 42 lack proper antecedent basis. In claim 43, the phrases “each said sleeve panel”, “each said locking tab”, “said sleeve panel”, “each said channel” (two places), “said locking tab” (two places) and “said channel” lack proper antecedent basis. In claim 44, the phrases “each said channel” (two places), “said locking tab” (two places), “said ledge” and “said channel” lack proper antecedent basis. The phrases “said channel” in claim 45 and “said locking tab” in claim 46 lack proper antecedent basis.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 44, 45 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Troth (3,941,300). To the extent that the Examiner can determine the scope of the claims, Troth discloses a product container (Figures 1-4) comprising an elongated sleeve (14) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including at least a

pair of resilient locking tabs (16) extending from the peripheral edge of the opening; and an end cap (18) adapted and configured for reception within the opening of the sleeve. The end cap defining at least a pair of discrete channels therein (34; column 7, lines 7-8) with each channel having an outwardly extending rim and a ledge (Figure 4), and the each channel receiving a corresponding one of the locking tabs therein, and a given of the locking tabs releasably engaging a given of the ledges of a given of the channels to retain the end cap in the sleeve.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 20, 22, 27, 28, 30-36, 38, 39, 41, 42, 46 and 47 are rejected under 35 U.S.C.

103(a) as being unpatentable over Troth in view of The Great Britain Patent No. 2 349 143 to Brain (hereinafter Brain). Troth discloses the product container as above having most of the limitations of the claims includes each of the locking tabs having a width exceeding a height except for each of the locking tabs having at least one pair of parallel edges.

Brain shows a product container comprising an elongated sleeve (14) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including at least a pair of opposed resilient locking tabs (42) extending from the peripheral edge of the opening for releasably engaging an end cap received within the opening with each locking tab having at least one pair of parallel edges; and an end cap (12) adapted and configured for reception within the opening of

the sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Brain to modify the locking tabs of Troth so each of the locking tabs comprises at least one pair of parallel edges for better securing the locking tabs to the channels and because the selection of the specific shape for the locking tabs such as the locking tabs as taught by Troth or Brain or as claimed would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

10. Claims 23-26, 40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 20 above, and further in view of The Photographs of Lindt & Sprungli chocolate package (hereinafter Lindt & Sprungli). The product container of Troth as modified further fails to show the sleeve being defined by opposed first and second curved panels.

Lindt & Sprungli shows a product container comprising an elongated sleeve (pages 1-2) defined by opposed first and second curved panels. It would have been obvious to one having ordinary skill in the art in view of Lindt & Sprungli to modify the sleeve of Troth so the sleeve is defined by opposed first and second curved panels instead of the sleeve of Troth to allow the container for holding various type of products and because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

As to claim 43, Lindt & Sprungli shows at least one convex sleeve panel (one side of the sleeve) with an associated panel curvature.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 20, 22-28, 30-36 and 38-47 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 7,000,775 in view of Bouche (5,005,759) or The DE Patent No.1536131 to Landor or Lindt & Sprungli . The Patent claims most of the structural limitations of the claims in the instant patent application except for each of the locking tabs having a width exceeding a height or the sleeve including at least one convex sleeve panel.

Bouche shows a product container (1) comprising a pair of locking tabs (35-37) with each locking tab having a width exceeding a height (Figure 1 & 3). Landor suggests a container in the embodiment of Figures 2 & 5, comprising at least a pair of locking tabs (between two slits 21 in Figure 2 or 35 in Figure 5) with each locking tab having a width exceeding a height. Lindt & Sprungli shows at least one convex sleeve panel (one side of the sleeve) with an associated panel curvature.

It would have been obvious to one having ordinary skill in the art in view of Bouche or Landor to modify the size of the locking tabs in the claims of the Patent so the each locking tab

comprises the width exceeding the height for better securing the end cap to the sleeve and because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art in view of Lindt & Sprungli to modify the sleeve of the Patent so the sleeve comprises at least one convex sleeve panel to holding a different type of article.

Response to Arguments

Applicant's arguments with respect to 3/3/2009 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's arguments with respect to 112, second paragraph are noted. They are not persuasive because the phrase "each said element" should be changed to --each said at least one element-- for referring back to "at least one element".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb
April 21, 2009

/Luan K. Bui/
Primary Examiner
Art Unit 3728